



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

November 3, 2017

RAYMOND R MASON, SR.
5 MONTICELLO DR W
WORCESTER, MA 01603-1663

Re: Central Mass Transit
Management/Worcester Regional Transit
Authority
Case 01-CA-203563
01-CA-203617

Amalgamated Transit Union Local 22
Case 01-CB-203643

Dear Mr. Mason:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of September 19, 2017.

To the extent that your appeal claims that the Employer discriminated against you on the basis of age, our agency enforces only the National Labor Relations Act which does not cover age discrimination. As such, we make no determination on your claim of age discrimination. If you wish to pursue your age discrimination claim further, the U.S. Equal Employment Opportunity Commission ("EEOC") is a federal agency responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's age.

In your appeal, you also claim that the agreement between the Employer and Union which does not allow employees to grieve discipline imposed for using personal electronic devices while driving prevents employees from engaging in concerted activity. To the contrary, employers may lawfully limit employees' discussions to non-work time. Moreover, the investigation disclosed that the Employer's policy was intended to require safe driving practices and applied to all employees. As to allegations that you were treated differently than two co-workers, there is insufficient evidence to substantiate your claims.

With respect to your allegations against the Union, a union is afforded a wide range of discretion in the performance of its representation functions, including decisions not to process grievances, provided that its conduct is not motivated by arbitrary, discriminatory, or irrelevant


Central Mass Transit
Management/Worcester Regional Transit
Authority
Cases 01-CA-203563, et al.

-2

considerations. *Vaca v. Sipes*, 386 U.S. 171 (1967). In the instant matter, there is insufficient evidence in the underlying investigation and in the appeal to demonstrate that the Union's refusal to grieve discipline imposed for using personal devices while driving was based on unlawful reasons under the National Labor Relations Act. The evidence supports that the Union exercised reasonable discretion in the performance of its representation functions. Accordingly, further proceedings are unwarranted.

Sincerely,

Jennifer A. Abruzzo
Acting General Counsel



By:

Mark E. Arbesfeld, Acting Director
Office of Appeals

cc: JOHN J. WALSH, JR.
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
10 CAUSEWAY ST FL 6
BOSTON, MA 02222-1001

KIMBERLY A. ROZAK, ESQ.
MIRICK O'CONNELL
100 FRONT ST
WORCESTER, MA 01608-1425

NICOLE HORBERG DECTER, ESQ.
SEGAL ROITMAN, LLP
111 DEVONSHIRE ST 5TH FL
BOSTON, MA 02109-5407

KENNETH K KEPHART
BUSINESS AGENT
AMALGAMATED TRANSIT UNION
LOCAL 22
51 UNION ST
WORCESTER, MA 01608

JAMES PARKER
GENERAL MANAGER
CENTRAL MASS TRANSIT
MANAGEMENT/WORCESTER REGIONAL
TRANSIT AUTHORITY
42 QUINGSAMOND AVE
WORCESTER, MA 01610

kf